

Editor's note: appealed - Reversed (Gov't stipulated factual error), Civ.No. 81-982 (D.N.M. Sept. 8, 1983)

LAWRENCE E. DYE

IBLA 81-313

Decided September 8, 1981

Appeal from decision of New Mexico State Office, Bureau of Land Management, rejecting noncompetitive oil and gas lease application. NM 42138.

Affirmed.

1. Oil and Gas Leases: Applications: Sole Party in Interest

A noncompetitive oil and gas lease application filed in a simultaneous drawing must be rejected if it contains the names of additional parties in interest, and there is a failure to submit the information required by 43 CFR 3102.2-7(b).

2. Evidence: Presumptions -- Evidence: Sufficiency

A presumption of regularity supports the official acts of public officers and, absent clear evidence to the contrary, it will be presumed that they have properly discharged their official duties.

3. Evidence: Presumptions -- Evidence: Sufficiency -- Oil and Gas Leases: Applications: Sole Party in Interest affidavits and other evidence, including a shipping notice and a delivery receipt, indicating that the information required by 43 CFR 3102.2-7(b), in connection with noncompetitive oil and gas lease offers, was submitted timely to BLM is not sufficient to overcome the

presumption that public officials have properly discharged their duties and have not misplaced or lost the document in issue where the corroborating evidence fails to relate the submission directly to the lease application at issue.

APPEARANCES: Thomas J. Mullin, Esq., Rochester, New York, for appellant; Gordon A. Goodwin, Esq., Manhattan Beach, California, for intervenor Frankie L. Payne; Gayle E. Manges, Esq., Office of the Field Solicitor, Santa Fe, New Mexico, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Lawrence E. Dye has appealed from a decision of the New Mexico State Office, Bureau of Land Management (BLM), dated December 9, 1980, rejecting his noncompetitive oil and gas lease application, NM 42138, for failure to comply with 43 CFR 3102.2-7 (45 FR 35162 (May 23, 1980)), regarding other parties in interest. Appellant's oil and gas lease application was drawn with first priority on August 21, 1980, for parcel NM 656. In its decision BLM stated:

Lawrence E. Dye indicates on his oil and gas lease application he is the sole party in interest and then inserted the name of Claire E. Dye as another party in interest.

An Additional Evidence Required Decision was mailed to Mr. Dye on October 7, 1980 and returned to this office on October 27, 1980. Under Item No. 4, Mr. Dye states he is the sole party in interest and then entered the name and address of Claire E. Dye, indicating she is his wife.

Compliance was not made to Regulations 43 CFR 3102.2-7, therefore, offer to lease NM 42138 is hereby rejected. See Eugene Prato, 5 IBLA 87 (1972).

In his statement of reasons for appeal, appellant stated that "proper evidence of qualification for Claire E. Dye as another party in interest was properly filed with the Bureau of Land Management Office by posting the same by a duly licensed interstate carrier within 15 days of the filing of the lease offer or application." Appellant also requested a hearing.

In support of his appeal and his request for a hearing, appellant subsequently submitted the affidavit of him and his wife and the affidavit of one Albert DiGiulio, Jr. In his affidavit DiGiulio states

that "[o]n or about July 17, 1980, I mailed Drawing Entry Cards for Lawrence E. Dye and Claire E. Dye by priority mail to the New Mexico Bureau of Land Management by depositing such cards in a mail box under the exclusive care of the United States Post Office." Appellant's oil and gas lease application for NM 656 was date stamped received by BLM on July 22, 1981. DiGiulio states further that "[o]n July 18, 1981, certain additional supplemental required forms executed by Lawrence E. Dye and Claire E. Dye * * * were transmitted by me via Federal Express to the New Mexico Bureau of Land Management Office." (Emphasis added.)

In their affidavit appellant and his wife state:

2. Attached hereto as Exhibit A is a copy of a transmittal letter dated July 18, 1980 which accompanied the submission of the proper documentation required for Claire E. Dye as an other [sic] party in interest. These documents were submitted to the office of the BLM via Federal Express as evidence [sic] by the shipping notice (Air-Bill No. 21210962) attached hereto as Exhibit B. This transmittal was accomplished at our direction and on our behalf by Albert DiGiulio, Jr.

3. Upon learning of the position of the BLM that these documents were allegedly never received by it, we requested confirmation of the filing from Federal Express. Attached hereto as Exhibit C is the Delivery Record by Federal Express indicating that the transmittal in question was received by Pamela Valdez on July 21, 1980.

The Field Solicitor, on behalf of BLM, submitted two memorandums dated May 29, 1981, and June 1, 1981, from the Chief, Oil and Gas Section, New Mexico State Office, stating that a thorough search of BLM files had not turned up the information purportedly filed by appellant and his wife.

[1] It is well established that failure to comply with 43 CFR 3102.2-7(b) (formerly 3102.7 (1979)), requiring the submission of certain information regarding other parties in interest 1/, must result

1/ The regulation requires the offeror to submit the following:

"A statement, signed by both the offeror * * * and the other parties in interest, setting forth the nature of any oral understanding between them, and a copy of any written agreement * * * [to] the proper Bureau of Land Management office not later than 15 days after the filing of the offer * * *. Such statement or agreement shall be accompanied by statements, signed by the other parties in interest, setting forth their citizenship and their compliance with the acreage limitations of §§ 3101.1-5 and 3101.2-4 of this title." 43 CFR 3102.2-7(b) (45 FR 35162 (May 23, 1980)).

in rejection of the lease offer. Clayton H. Read, 49 IBLA 271 (1980), and cases cited therein. It is appellant's contention, however, that he complied with 43 CFR 3102.2-7 in a timely manner. Accordingly, the question is whether there is sufficient evidence to establish with reasonable certainty that appellant, through his filing agent, did, in fact, make the required filing for his application for parcel NM 656.

[2] There is a legal presumption of regularity which attends the official acts of public officers and, in the absence of clear evidence to the contrary, courts presume they have properly discharged their official duties. United States v. Chemical Foundation, 272 U.S. 1, 14-15 (1926); Kephart v. Rodgers, 505 F.2d 1085, 1090 (3rd Cir. 1974); John Walter Starks, 55 IBLA 266 (1981). Rebuttal of such a presumption requires the presentation of substantial countervailing evidence. Stone v. Stone, 136 F.2d 761, 763 (D.C. Cir. 1943); see John Walter Starks, *supra*.

In a similar case, John Walter Starks, *supra*, the Board stated:

This Board has previously considered the problem of alleged BLM misplacement of offeror's interest statements. E.g., Charles J. Babington, *supra*; [36 IBLA 107 (1978)] W. J. Langley, *supra*; [32 IBLA 118 (1977)] Duncan Miller, 29 IBLA 43 (1977). In Langley and Owen, *supra*, [David F. Owen, 31 IBLA 24 (1977)] we held that the evidence tendered by the appellants to show that they had in fact sent their fractional interest declarations along with their entry that cards to the BLM was insufficient to rebut the legal presumption that administrative officials have properly discharged their duties and had not misplaced or lost the document in issue. In Owen we noted that BLM also follows procedures, amounting to "regular business practice," to insure that submitted materials are not mishandled. We also noted the adverse effect that would accrue to the holders of the next priority and to BLM's efforts to effectively administer the program were we to hold that such evidence is sufficient. 31 IBLA at 29. [Footnote omitted.]

We find that the assertions contained in the affidavits submitted by appellant do not constitute a sufficient predicate for holding that the agent-offeror statement of interest was properly submitted to the BLM, and that BLM lost it.

Id. at 270.

After a careful review of the evidence submitted by appellant, we do not believe that he has overcome the presumption of regularity.

[3] Appellant has established that on July 18, 1980, his agent transmitted to BLM via Federal Express "certain additional supplemental required forms." The cover letter accompanying these forms was signed by the agent. It merely stated: "Enclosed are necessary forms to coincide with the Simultaneous Oil and Gas Drawing Entry cards that we're submitting to the New Mexico Land Office for the July, 1980 Federal Land Drawings; Friday, July 18, 1980. (Form 3112-1)." No copy of the form allegedly submitted on behalf of appellant has been tendered.

Neither appellant's name nor any parcel number are included on the cover letter. Since the cover letter is couched in the plural, the implication is that the agent was submitting more than one "supplemental required form." Therefore, assuming the agent sent certain forms on July 18 and that such forms were received by BLM on July 21, appellant has failed to establish that the necessary form executed in connection with appellant's application for parcel NM 656 was included among the information that might have been received. This Board has previously held that an agent's uncorroborated statement that the information was specifically included, is not sufficient to overcome the presumption that BLM has not lost or misplaced the document in issue. Metro Energy, Inc., 52 IBLA 369 (1981).

We must hold that appellant failed to comply with 43 CFR 3102.2-7 and that BLM properly rejected his lease offer. Appellant's request for a hearing is denied.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

